

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM BUFORD,

Petitioner,

No. CIV S-03-2412 GEB EFB P

vs.

D. BUTLER,

Respondent.

ORDER

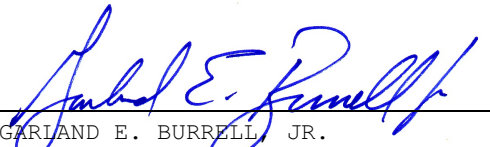
Petitioner filed a notice of appeal of this court's June 11, 2008 denial of his application for a writ of habeas corpus. On July 11, 2008, Judge Alarcón directed the processing of petitioner's appeal without issuance of a certificate of appealability. On July 8, 2010, the Ninth Circuit remanded petitioner's case to the undersigned for the limited purpose of granting or denying a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." *See also* Fed. R. App. P. 22(b). A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debatable among jurists of reason," could be resolved differently by a different court, or is "adequate to deserve encouragement to proceed further." Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).

1 In this case, petitioner contends that the Contra Costa Superior Court erred in  
2 concluding that some evidence supported the Board of Prison Terms' decision not to set a release  
3 date. The court concludes that petitioner has made the requisite showing for issuance of a  
4 certificate of appealability on the issue of whether some evidence supported the Board's decision.

5 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability shall  
6 issue in the present action.

7 Dated: October 18, 2010

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10 GARLAND E. BURRELL, JR.  
United States District Judge